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SEDERHANA IRRIGATION AND LAND DEVELOPMENT

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Agreement Between the
UNITED STATES OF AMERICA
and INDONESIA

Signed at Jakarta August 31, 1978

NOTE BY THE DEPARTMENT OF STATE

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INDONESIA

Sederhana Irrigation and Land Development: Loan

Agreement signed at Jakarta August 31, 1978;
Entered into force August 31, 1978.

A.I.D. Loan No. 497-T-054

Project No. 497-0252

PROJECT

LOAN AGREEMENT

BETWEEN

THE REPUBLIC OF INDONESIA

and the

UNITED STATES OF AMERICA

for

SEDERHANA (SIMPLE) IRRIGATION AND

LAND DEVELOPMENT II

Dated: August 31, 1978

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[1] Not printed herein. The annex is deposited in the archives of the Department of State where it is available for reference.

[2] Not printed herein. For text, see TIAS 9501; 30 UST.

A.I.D. Loan No. 497-T-054

Project No. 497-0252

PROJECT LOAN AGREEMENT

Dated August 31, 1978

Between THE REPUBLIC OF INDONESIA ("Borrower")

And THE UNITED STATES OF AMERICA, acting through the Agency for International Development ("A.I.D.")

Article 1. The Agreement

The purpose of this Agreement is to set out the understandings of the parties named above ("Parties") with respect to the undertaking by the Borrower of the Project described below, and with respect to the financing of the Project by the Parties.

Article 2: The Project

SECTION 2.1. Definition of Project. The Project, which is further described in Annex 1, is designed to assist the Ministry of Public Works (MPW) and the Ministry of Agriculture (MOA) to plan and, with participation from the farmers, to implement Sederhana (simple) irrigation and land development systems; to increase food crop production; and to increase income and employment opportunities in the rural areas included within the Project. Annex 1, attached, amplifies the above definition of the Project.

Within the limits of the above definition of the Project, elements of the amplified description stated in Annex 1 may be changed by written agreement of the authorized representatives of the Parties named in Section 9.2, without formal amendment of this Agreement.

Article 3: Financing

SECTION 3.1. The Loan. To assist the Borrower to meet the costs of carrying out the Project, A.I.D., pursuant to the Foreign Assistance Act of 1961, as amended,[1] agrees to lend the Borrower under the terms of this Agreement not to exceed fourteen million seven hundred thousand United States ("U.S.") dollars ($14,700,000) ("Loan"). The aggregate amount of disbursement under the Loan is referred to as "Principal". The Loan may be used to finance foreign exchange costs, as defined in Section 7.1, and local currency costs, as defined in Section 7.2, of goods and services required for the Project.

SECTION 3.2. Borrower Resources for the Project

(a) The Borrower agrees to provide or cause to be provided for the Project all funds, in addition to the Loan, and all other resources required to carry out the Project effectively and in a timely manner.

(b) The resources provided by Borrower for the Project will be not less than the equivalent of U.S. $12,200,000 including costs borne on an "in-kind" basis.

[1] 75 Stat. 424; 22 U.S.C. § 2151 note.

SECTION 3.3. Project Assistance Completion Date

(a) The "Project Assistance Completion Date" ("PACD"), which is August 31, 1983, or such other date as the Parties agree to in writing, is the date by which the Parties estimate that all services financed under the Loan will have been performed and all goods financed under the Loan will have been furnished for the Project as contemplated in this Agreement.

(b) Except as A.I.D. may otherwise agree in writing, A.I.D. will not issue or approve documentation which would authorize disbursement of the Loan for services performed subsequent to the PACD or for goods furnished for the Project, as contemplated in this Agreement, subsequent to the PACD.

(c) Requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, are to be received by A.I.D. or any bank described in Section 8.1 no later than nine (9) months following the PACD, or such other period as A.I.D. agrees to in writing. After such period, A.I.D., giving notice in writing to the Borrower, may at any time or times reduce the amount of the Loan by all or any part thereof for which requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, were not received before the expiration of said period.

Article 4: Loan Terms

SECTION 4.1. Interest. The Borrower will pay to A.I.D. interest which will accrue at the rate of two percent (2%) per annum for ten (10) years following the date of the first disbursement hereunder and at the rate of three percent (3%) per annum thereafter on the outstanding balance of Principal and on any due and unpaid interest. Interest on the outstanding balance will accrue from the date (as defined in Section 8.5) of each respective disbursement, and will be payable semiannually. The first payment of interest will be due and payable no later than six (6) months after the first disbursement hereunder, on a date to be specified by A.I.D.

SECTION 4.2. Repayment. The Borrower will repay to A.I.D. the Principal within thirty (30) years from the date of the first disbursement of the Loan in forty-one (41) approximately equal semiannual installments of Principal and interest. The first installment of Principal will be payable nine and one-half (9½) years after the date on which the first interest payment is due in accordance with Section 4.1. A.I.D. will provide the Borrower with an amortization schedule in accordance with this Section after final disbursement under the Loan.

SECTION 4.3. Application, Currency and Place of Payment. All payments of interest and Principal hereunder will be made in U.S. dollars and will be applied first to the payment of interest due and then to the repayment of Principal. Except as A.I.D. may otherwise specify in writing, payments will be made to the Controller, Office of Financial Management, Agency for International Development, Washington, D.C. 20523, U.S.A., and will be deemed made when received by the Office of Financial Management.

SECTION 4.4. Prepayment. Upon payment of all interest and any refunds then due, the Borrower may prepay, without penalty, all or any part of the Principal. Unless A.I.D. otherwise agrees in writing, any such prepayment will be applied to the installments of Principal in the inverse order of their maturity.

SECTION 4.5. Renegotiation of Terms

(a) The Borrower and A.I.D. agree to negotiate, at such time or times as either may request, an acceleration of the repayment of the Loan in the event that there is any significant and continuing improvement in the internal and external economic and financial position and prospects of Indonesia, which enable the Borrower to repay the Loan on a shorter schedule.

(b) Any request by either Party to the other to so negotiate will be made pursuant to Section 9.2, and will give the name and address of the person or persons who will represent the requesting Party in such negotiations.

(c) Within thirty (30) days after delivery of a request to negotiate, the requested Party will communicate to the other, pursuant to Section 9.2, the name and address of the person or persons who will represent the requested Party in such negotiations.

(d) The representatives of the Parties will meet to carry on negotiations no later than thirty (30) days after delivery of the requested Party's communication under subsection (c). The negotiations will take place at a location mutually agreed upon by the representatives of the Parties, provided that, in the absence of mutual agreement, the negotiations will take place at the Office of Borrower's Minister of Finance in Indonesia.

SECTION 4.6. Termination on Full Payment. Upon payment in full of the Principal and any accrued interest, this Agreement and all obligations of the Borrower and A.I.D. under it will cease.

Article 5: Conditions Precedent to Disbursement

SECTION 5.1. First Disbursement. Prior to the first disbursement under the Loan, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Borrower will, except as the Parties may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

(a) An opinion of the Minister of Justice that this Agreement has been duly authorized and/or ratified by, and executed on behalf of, the Borrower, and that it constitutes a valid and legally binding obligation of the Borrower in accordance with all of its terms;

(b) A statement of the name of the person holding or acting in the Office of the Borrower specified in Section 9.2 and of any additional representatives, together with a specimen signature of each person specified in such statement;

(c) The time schedule for the evaluation program referred to in Section 6.1.

SECTION 5.2. Disbursement for Construction Activities. Prior to disbursement under the Loan or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made for construction activities, the Borrower, will, except as the Parties may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

(a) Detailed criteria for selection of irrigation subprojects which includes economic, environmental and social factors.

(b) A mutually agreed technical basis for approving subprojects.

(c) A written statement setting forth the disbursement procedures to be used, including a flat rate per hectare where applicable, for the following cost items: (i) survey and design of land preparation, (ii) survey and design of major works and tertiary canals and on-farm water distribution systems, and (iii) construction of major works and tertiary canals and on-farm water distribution systems.

(d) An implementation plan which will include a time phased schedule of events necessary to complete the systems and evidence that adequate staff will be assigned to such activity.

SECTION 5.3. Disbursement for Land Preparation.

Prior to disbursement under the Loan, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made for land preparation the Borrower will, except as the Parties may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D. an implementation plan and a statement setting forth the disbursement procedures to be used for such activities.

SECTION 5.4. Disbursement for Water-User Associations. Prior to disbursement under the Loan, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made for the establishment of Water-User Associations the Borrower will, except as the Parties may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D. an implementation plan and a statement setting forth the disbursement procedures to be used for such activities.

SECTION 5.5. Disbursement for Training Activities Commenced After January 1980. Prior to disbursement under the Loan, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made for training activities commenced after January 1980, the Borrower will, except as the Parties may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D. a comprehensive training plan for the Project.

SECTION 5.6. Notification. When A.I.D. has determined that the conditions precedent specified in Sections 5.1, 5.2, 5.3, 5.4 and 5.5 have been met, it will promptly notify the Borrower.

SECTION 5.7. Terminal Dates for Conditions Precedent. If all the conditions specified in Section 5.1 have not been met within 90 days from the date of this Agreement, or

such later date as A.I.D. may agree to in writing, A.I.D., at its option, may terminate this Agreement by written notice to Borrower.

Article 6: Special Covenants

SECTION 6.1. Project Evaluation. The Parties agree to establish an evaluation program as part of the Project. Except as the Parties otherwise agree in writing, the program will include, during the implementation of the Project and at one or more points thereafter: (a) evaluation of progress toward attainment of the objectives of the Project; (b) identification and evaluation or problem areas or constraints which may inhibit such attainment; (c) assessment of how such information may be used to help overcome such problems; and (d) evaluation, to the degree feasible, of the overall development impact of the Project.

SECTION 6.2. Criteria for Sederhana Irrigation Subprojects. Borrower covenants that throughout the life of the Project all Sederhana irrigation subprojects will be selected in accordance with the selection criteria approved by the Borrower and A.I.D. and constructed in accordance with the design and construction criteria approved by the Borrower and A.I.D.

SECTION 6.3. Training. Borrower covenants that throughout the life of the Project all training activities shall conform with a training plan which has been approved by the Borrower and A.I.D.

SECTION 6.4. Operation and Maintenance of Completed Subprojects. Borrower covenants that all completed subprojects will be operated and maintained in a satisfactory operating condition throughout the life of the Project pursuant to an operation and maintenance plan approved by Borrower and A.I.D.

Article 7: Procurement Source

SECTION 7.1. Foreign Exchange Costs. Disbursements pursuant to Section 8.1 will be used exclusively to finance the costs of goods and services required for the Project having their source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts entered into for such goods and services ("Foreign Exchange Costs"), except as A.I.D. may otherwise agree in writing, and except as provided in the Project Loan Standard Provisions Annex, Section C.1(b) with respect to marine insurance.

SECTION 7.2. Local Currency Costs. Disbursements pursuant to Section 8.2 will be used exclusively to finance the costs of goods and services required for the Project

having their source and, except as A.I.D. may otherwise agree in writing, their origin in Indonesia ("Local Currency Costs").

Article 8: Disbursements

SECTION 8.1. Disbursement for Foreign Exchange Costs.

(a) After satisfaction of conditions precedent, the Borrower may obtain disbursements of funds under the Loan for the Foreign Exchange Costs of goods or services required for the Project in accordance with the terms of this Agreement, by such of the following methods as may be mutually agreed upon:

(1) by submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, (A) requests for reimbursement for such goods or services, or (B) requests for A.I.D. to procure commodities or services in Borrower's behalf for the Project; or

(2) by requesting A.I.D. to issue Letters of Commitment for specified amounts (A) to one or more U.S. banks, satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made by them to contractors or suppliers, under Letter of Credit or otherwise, for such goods or services, or (B) directly to one or more contractors or suppliers, committing A.I.D. to pay such contractors or suppliers for such goods or services.

(b) Banking charges incurred by Borrower in connection with Letters of Commitment and Letters of Credit will be financed under the Loan unless the Borrower instructs A.I.D. to the contrary. Such other charges as the Parties may agree to may also be financed under the Loan.

SECTION 8.2. Disbursement for Local Currency Costs. After satisfaction of conditions precedent, the Borrower may obtain disbursements of funds under the Loan for Local Currency Costs required for the Project in accordance with the terms of this Agreement, by submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, requests to finance such costs. These disbursements may be made by A.I.D.:

(1) in U.S. dollars equivalent to the local currency cost, or

(2) in local currency acquired by A.I.D. by purchase or from local currency already owned by the U.S. Government.

SECTION 8.3. Other Forms of Disbursement. Disbursements of the Loan may also be made through such other means as the Parties may agree to in writing.

SECTION 8.4. Rate of Exchange. If funds provided under the Loan are introduced into Indonesia by A.I.D. or any public or private agency for purposes of carrying out obligations of A.I.D. hereunder, the Borrower will make such arrangements as may be necessary so that such funds may be converted into

currency of Indonesia at the highest rate of exchange which at the time the conversion is made, is not unlawful in Indonesia.

SECTION 8.5. Date of Disbursement. Disbursement by A.I.D. will be deemed to occur (a) on the date on which A.I.D. makes a disbursement to the Borrower or its designee, or to a bank, contractor or supplier pursuant to a Letter of Commitment, contract, or purchase order; (b) on the date on which A.I.D. disburses to the Borrower or its designee local currency acquired in accordance with Section 8.2.

Article 9: Miscellaneous

SECTION 9.1. Communications. Any notice, request, document, or other communication submitted by either Party to the other under this Agreement will be in writing or by telegram or cable, and will be deemed duly given or sent when delivered to such Party at the following address:

To the Borrower:

Mail Address: Departemen Luar Negeri
Jalan Pejambon No. 6
Jakarta Pusat, Indonesia

Alternate address for telegrams: DEPLU Jakarta

To A.I.D.:

Mail Address: United States Agency for International Development
American Embassy
Jakarta, Indonesia

Alternate address for telegrams: USAID AMEMB Jakarta

All such communications will be in English, unless the Parties otherwise agree in writing. Other addresses may be substituted for the above upon giving of notice.

SECTION 9.2. Representatives. For all purposes relevant to this Agreement, the Borrower will be represented by the individual holding or acting in the Office of Chairman or Vice Chairman, National Development Planning Agency ("BAPPENAS") and A.I.D. will be represented by the individual holding or acting in the Office of Director, United States A.I.D. Mission to Indonesia, each of whom, by written notice, may designate additional representatives for all purposes other than exercising the power under Section 2.1 to revise elements of the amplified description in Annex 1. The names of the representatives of the Borrower, with specimen signatures, will be provided to A.I.D., which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

SECTION 9.3. Standard Provisions Annex. A "Project Loan Standard Provisions Annex" (Annex 2)[1] is attached to and forms part of this Agreement.

IN WITNESS WHEREOF, the Borrower and the United States of America, each acting through its duly authorized representative, have caused this Agreement to be signed in their names and delivered as of the day and year first above written.

REPUBLIC OF INDONESIA

By: M. Panggabean
M. Panggabean
Minister for Foreign Affairs, ad interim

UNITED STATES OF AMERICA

By: Paul F. Gardner
Paul F. Gardner
Charge d'Affaires ad interim

[1] See footnote 1, p. 4.

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